Attorney General
Betty D. Montgomery

January 9, 1997

Via Overnight Mail

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *In the Matter of Federal State Joint Board on Universal Service,* C C Docket No. 96-45.

Dear Mr. Caton:

Enclosed please find the original and five copies of the Reply Comments of the Public Utilities Commission of Ohio in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

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BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	

REPLY COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

I. INTRODUCTION

The Public Utilities Commission of Ohio (PUCO) hereby submits its reply comments pursuant to the Federal Communication Commission's (FCC's) Common Carrier Bureau's November 18, 1996 Notice (DA 96-1891) requesting comments on the Federal-State Joint Board's (Joint Board's) Recommended Decision to the FCC on Universal Service pursuant to section 254 of the Telecommunications Act of 1996 (1996 Act).

In these reply comments, the PUCO responds to initial comments set forth by other parties to this proceeding. Specifically, these reply comments respond to various commenters in this proceeding that have addressed the following topics: (1) fundable services; (2) proxy models and relevant benchmark rates; (3) support for schools and libraries; and (4) administration of the universal service programs. Reply comments in this proceeding are due at the FCC on or before January 10, 1997.

II. DISCUSSION

SERVICES ELIGIBLE FOR SUPPORT

Local usage should be included with those services eligible for support.

The PUCO disagrees with Ameritech's arguments against including a local usage component in the definition of Universal Service. Ameritech's Comments at 5. Universal Service must incorporate more than access to the network. Without the ability to use the network, access is without benefit. In addition, there is no use for access to the network if each call is too expensive to place. Some form of usage component must be included in the definition of Universal Service. A usage component also meets the four criteria set forth in the Act, Section 254(c)(1)(A)-(D), which factors are to be considered to determine whether a service should be included in the definition of universal service.

In reality, Ameritech's argument against usage is a "red herring." There is nothing uniquely "federal" about local access versus usage. If Ameritech's argument is accepted and taken to its logical consequence, there would be *no* federal support for local service since their same argument can apply to federal support for local access. It is beyond dispute that Congress intended to provide federal support for universal service, and acceptance of Ameritech's argument would erode one of the fundamental tenets of telephone affordability -- a certain level of local usage. Accepting Ameritech's argument against usage also defies practical reality. For customers, access and usage go hand-in-hand and they should not be severed for purposes of this docket. It is also unacceptable, however, for the FCC to impose a one-size-fits-all federal minimum usage. Therefore, the FCC should adopt usage as being eligible, but defer to states to set the minimum usage level.

Non-exempt local carriers should be required to provide interconnection and resale services.

The PUCO observes that Ameritech supports the Joint Board's recommendation that universal service should include access to interexchange services; however, Ameritech believes that in areas in which the incumbent LEC (ILEC) has equal access obligations, any other carrier receiving high-cost/low-income universal service support in that service area should also be obligated to provide equal access. Ameritech's comments at 6. The PUCO supports Ameritech's recommendation on this matter.

Additionally, the PUCO submits that as a prerequisite to universal service funding eligibility, all facilities-based local exchange carriers should be required to provide interconnection to other certified local carriers and to unbundle and resell their services. The PUCO observes that this recommended requirement should not apply to exempt rural carriers as such a requirement would preclude exempt rural carriers from receiving federal high cost assistance.[1] The PUCO maintains that adopting such requirement would further assist in achieving the 1996 Act's general requirement of establishing competitively neutral rules. The PUCO's recommendation on this matter is consistent with its petition for reconsideration filed in CC Docket no. 96-98, where the PUCO requested that the FCC's interconnection,

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1 The PUCO notes that is universal service guidelines, which were adopted in its local competition proceeding (Case No. 95-845-TP-COI), require as a precondition for intrastate funding the existence of a competitive carrier. The Ohio high cost fund established in PUCO Case NO. 95-845-TP-COI was a *new* funding source for common carrier being established contemporaneous to the introduction of competition. Whereas, the FCC's universal service program adopted in its 96-45 proceeding will replace existing high cost support programs that were established pursuant to the requirements adopted in CC Docket No. 80-286. Since the new universal service requirements will replace existing federal support programs, the PUCO is not opposed to the FCC continuing such support even if competition does not exist in certain federally funded service areas.

unbundling, and resale requirements should apply to both ILECs and new facilities-based entrants.

The PUCO would amend Universal Service guidelines if the FCC elects to provide funding for single line business customers.

The PUCO notes that some carriers do not advocate the Joint Board's recommendation of providing high cost support to single-line businesses. Ameritech Comments at 7; Sprint Comments at 14 and 15; and Teleport Communications Group Inc. (TCG) comments at 3, 4. While not necessarily opposing universal support to single line business customers, the PUCO observes that its current intrastate universal service funding guidelines do not include support for these services. The PUCO submits that high cost assistance primary business lines at rural locations will assist in developing the overall economic environment of these rural communities. Specifically, high cost assistance to primary business lines will assist businesses in competing with businesses that are located in low cost urban areas. Moreover, it goes without saying that, as the businesses in these locations become more competitive and prosperous, the local residents' overall quality of life will grow. The PUCO notes that, if the FCC were to extend universal service funding assistance to single line business customers, PUCO would then amend its intrastate universal service guidelines to comport with the FCC's requirements. The PUCO's universal service guidelines were recently adopted on June 12, 1996, in its local exchange competition proceeding, PUCO Case No. 95-845-TP-COI.

Additionally, if the FCC were to elect to provide assistance to single line business customers, the PUCO recommends that the FCC should establish two individual benchmark rates for single line business customers

and residential customers. Specifically, the first benchmark rate would be determined by the average revenue for residential lines. The second benchmark rate would be determined by the average revenue for single line business customers. These two benchmark rates would then be compared to proxy formula results for a given service area to determine the requisite level of funding necessary for the two different classes of service (*i.e.*, residential and nonresidential). Adopting such an approach would ensure that the inclusion of business line revenues in a single benchmark rate would not increase inappropriately the average benchmark rate for residential service.

The PUCO currently requires separate local and toll disconnection of service.

Ameritech, GTE, MCI, Sprint, and MFS all argue against the prohibition of the disconnection of a Lifeline subscriber's local service for failure to pay for toll calls. Ameritech Comments at 14; GTE Comments at 85-87; MCI Comments at 12-13; Sprint Comments at 18; and MFS Comments at 27-28. The PUCO has also heard similar arguments in its own disconnection investigation, PUCO Case No. 95-790-TP-COI. The PUCO clarified its position and issued its final decision in this case on December 12, 1996 prohibiting the disconnection of *any* customer's local service for failure to pay toll charges. Under the PUCO policy, nonpayment of toll charges will result only in the disconnection of toll service. The PUCO believes that the disallowance of disconnection of local service for non-payment of toll contributes to a "level playing field" in the competitive market, and is more reflective of a competitive market where such links to monopoly service do not exist.

As also explained in its December 12, 1996 Order, the PUCO's second policy objective in this case was to ensure that toll disconnection, through

either some form of toll blocking or through a "de-PIC-ing" mechanism, is available as a means by which a toll service provider may exercise its right to terminate toll service to its customer who has not timely paid for such service but is not to become a vehicle by which the customer's 1+access to any other toll service provider is denied. As a result of the PUCO's decision, the burden of toll disconnection now lies with the toll providers and they are responsible for developing and implementing methods for denying toll access in all its myriad forms. To achieve this objective, the PUCO also decided that no local service providers will be permitted to "universally" block access to all toll service for the nonpayment of toll charges owed to any particular toll service provider or group of toll service providers, including both intraLATA and interLATA toll providers. However, this provision will not be in effect until June 1997 when 1+intraLATA equal access is scheduled to be available in Ohio from all ILECs not legally constrained from offering interLATA services. The PUCO's entry on rehearing delineating its disconnection policies was attached as appendix b to its December 19, 1996 comments in this proceeding.

Universal Service support should apply to secondary residential lines.

GTE maintains that the Joint Board's recommendation to limit universal service support only to the primary line fails to address the public policy reasons supporting universal service assistance for all lines in a high cost area. GTE's comments at 77 - 82. GTE states that a universal service policy should not place carriers in the position of demanding that customers somehow prove or certify that they are "deserving". *Id.* GTE believes this requirement creates a significant administrative burden and puts LECs in the position of judging their customers. *Id.* GTE also argues that this

recommendation will also impede access to and use of information services and be in direct conflict with the 1996 Act. GTE maintains that, since many families today add a second line to allow family members to use on-line information services without the inconvenience of tying up the normal telephone line, a policy supporting only one line per household will result in many families not obtaining a second line. GTE argues that it is likely that additional lines in cities will be affordable without universal support, but this in not likely to be the case in rural areas.

The PUCO is not opposed to funding second residential lines through universal service support mechanisms. The PUCO notes, however, that the universal service support should attempt to correct those situations where carriers charge lower rates for the second line when in fact these lines are often more costly to install than the primary existing line. Specifically, in Ohio some carriers have proposed significantly lower monthly charges. Additionally, these second lines are often installed by waiving the non-recurring charge for the customer, when in fact it is much more costly to the company to install the additional line since a new drop often needs to be installed at the service location.

In an attempt to correct this situation, the PUCO recommends that if funding is to be extended to second lines at residential locations, the FCC should require, as a precondition for funding eligibility, that (absent demonstrative cost differences) the second line be provided at the same recurring and non-recurring rate to end users. On a related matter, the PUCO submits that, as a precondition to receipt of support, local carriers should offer promotions on a non-discriminatory basis for both the primary and secondary lines. The PUCO believes that such a requirement will assist in driving down

the rates associated with customers' primary lines, would further ensure that cost compensatory non-recurring charges are levied for the second line, and would ensure that the full panoply of services would be available in all service areas, including high cost and low income locations.

PROXY MODELS

Some Benchmark Rates should include toll revenues.

ALLTEL believes that it is inappropriate to use a nationwide average revenue per line as the revenue benchmark for comparison with the costs from a proxy model. ALLTEL Comments at 9, 10. Specifically, ALLTEL argues that since rural LECs generally have more limited local calling areas, lower local rates, and a lower business-to-residential line mix, that non-rural LECs' use of a national average will overstate the average revenues per line actually received by rural LECs. If such a benchmark is used, at a minimum, ALLTEL believes that revenues from access and discretionary services should not be included in the calculation since that would artificially reduce the size of the fund. ALLTEL Comments at 9, 10.

The PUCO questions ALLTEL's position on this matter. The PUCO notes that in many circumstances smaller local carriers do not generate the same per-line level of revenues for basic services as do many larger local carriers. The FCC should take into consideration, however, that these smaller carriers' calling areas are often limited in size and scope. As a result, customers served by these carriers are required to place more toll calls for their daily needs and services than those customers served by larger carriers with high loop concentrations and more expansive calling areas. The PUCO, therefore, recommends that the FCC, in addition to the inclusion of vertical

services, may want to consider also including the toll revenues of small local carriers when arriving at a proper benchmark rate for these companies.

Unconstitutional Takings Claims

GTE criticizes the "sufficiency" of the proposed universal service mechanism by suggesting that the proxy will generally understate the underlying costs of its services. GTE Comments at 26-31. GTE concludes that the proposed mechanism may create an unconstitutional taking of property without a reasonable opportunity to recover their investment. GTE Comments at 31-32. The PUCO asserts that GTE's reading of Section 254 is wrong in concluding that the federal universal service mechanism be based strictly on the actual cost of each service offered by a common carrier. As a related matter, and for the reasons stated below, GTE's reliance on *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 309 (1989), is misplaced. THE PUCO ASSERTS THAT the proposed benchmark and proxy model, particularly as modified in these comments, does represent a "specific, predictable and sufficient" mechanism to advance universal service, as required by Section 254.

The 1996 Act does not require that ILECs or any other carrier be guaranteed 100% recovery through the federal universal service mechanism of the actual cost a company claims to have incurred to provide a service to a particular customer (or customer group) less the actual, current rate associated with that service. Instead, Section 254 requires the new universal service mechanism to be "specific, predictable and sufficient." 47 U.S.C. § 254(b)(5). In the same manner that rates have previously been approved as "just and reasonable" by the FCC based on varying cost methods and rate design

approaches, the new universal service mechanism should result in rates that are "just, reasonable *and affordable*," as is required by Section 254(b)(1).

Congress also recognized that both federal and state universal service programs will be in effect and that they should work together, not independently, to make explicit those implicit subsidies currently associated with basic service. Therefore, it is premature to attack in isolation either the federal or state universal service programs as amounting to an unconstitutional taking. Further, Congress also gave the Joint Board and the FCC discretion to implement Section 254 in a way that they determine is necessary and appropriate for the protection of the public interest. Accordingly, it is not credible to suggest that Congress imposed a strict standard that the federal universal service mechanism, by itself, must always reimburse each carrier for every penny of embedded cost associated with each service eligible for universal service that is not being recovered in current rates.

In fact, in the case cited by GTE in support of its arguments, *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 309 (1989), the United States Supreme Court has squarely rejected such insular, self-serving arguments. *Duquesne* involved an overall rate increase that the Pennsylvania Public Utilities Commission granted to Duquesne Light Company. The Pennsylvania Commission had disallowed certain costs associated with a nuclear power plant. The company argued that the disallowance amounted to an unconstitutional taking. In particular, Duquesne argued that the Constitution requires that subsidiary aspects of Pennsylvania's ratemaking methodology be examined in piecemeal. *Duquesne*, 488 U.S. at 313.

The Court rejected that approach and made clear that the end result rather than the individual elements of a decision are controlling in any takings question. The Court examined whether the rates established would jeopardize the financial integrity of the utility, whether it left the utility insufficient operating capital or impeded its ability to raise future capital, and whether the overall rates would be adequate to compensate current equity holders of the risk associated with their investments in the utility. *Duquesne,* 488 U.S. at 312-313.

GTE does not argue that the proposed federal universal service mechanism sets rates that will adversely affect GTE's ability as a whole to raise capital or whether the proposed federal universal service mechanism will, in and of itself, create a situation where GTE's equity holders will become inadequately compensated for their investment in the company. GTE does not even argue that the proposed federal universal service mechanism would leave it worse off than it is today under current rates. In reality, GTE may receive more universal service funding under the proposed mechanism than it currently receives.

Moreover, GTE fails to acknowledge that the package of new responsibilities embodied in the 1996 Act also contained new freedoms and benefits for GTE and other ILECs. For example, GTE and others can now enter and compete more easily in the information services market, the long distance toll market and the equipment manufacturing market. The overall effect of these provisions of the 1996 Act would need to be considered in tandem prior to concluding that the regulatory scheme amounts to a confiscatory taking. The teaching of the *Duquesne* case is that the court will

look at the overall result of the regulatory scheme and will not employ a piecemeal approach.

GTE's takings argument should be rejected.

SCHOOLS AND LIBRARIES

The needs of state education institutions are best determined by the educational institutions.

AT&T suggests that in order to keep costs down and to allow each school to benefit from the program the FCC should establish a per-institution cap in addition to a lower overall cap on total spending. AT&T Comments at 21. The PUCO does not concur with AT&T's recommendation that the FCC establish a per-institution cap on spending. The determination of a per-institution cap is not an appropriate role for the federal government. The needs of state education institutions are best determined by the education infrastructure of each state. The FCC should use a block grant approach in distributing funds to the states, as suggested in the original PUCO comments (PUCO Comments at 19) which would allow state education authorities to determine the needs and requirements of each eligible school within their state.

Inside wire should be included as an eligible service for schools and libraries.

Some large LECs suggested early in this proceeding that the FCC should include as eligible services for schools and libraries only the "core" telecommunications services identified pursuant to Section 254(c)(1). Cincinnati Bell Comments at 14; Ameritech Comments at 18. The Joint Board rejected such an approach and recommended adopting a broader array of services including internal connections or "inside wire." Recommended

Decision at ¶ 473. Several telecommunication providers have criticized the Joint Board's recommendation in this regard and argue that classroom wiring and hardware (hubs, routers, servers, etc.) and Internet connectivity should not be eligible services for schools and libraries. Ameritech Comments at 18; ALLTEL Comments at 5; AT&T Comments at 18-20; Cincinnati Bell Comments at 13-14.

The PUCO rejects such a narrow and restrictive interpretation of Section 254 and commends both the Joint Board and the FCC for attempting to deploy a modern universal service mechanism designed to create meaningful access to advanced telecommunications services for schools and libraries. The PUCO submits that the Joint Board's approach is well-grounded in both policy and law, as will be further demonstrated below. The Joint Board's approach is directly justifiable by the letter and spirit of Section 254, as well as the legislative history. Installation and maintenance of internal connections is a "telecommunications service" under Section 254 of the 1996 Act and the provision of internal connections clearly enhances *access* to advanced telecommunications services, as required by section 254. Even assuming *arguendo* that the inside wire itself is not a service, the installation and maintenance associated with internal connections is clearly a service and represents a substantial portion of the overall cost for which the FCC could provide universal service support.

Congress gave the Joint Board and the FCC broad discretion to implement Section 254 in ways that they determine are necessary and appropriate for the protection of the public interest, convenience and necessity consistent with the Act. 47 U.S.C. § 254(b)(7). With respect to the designation of services to be included as eligible for purposes of the new

federal universal service mechanism, Congress broadly provided that the FCC shall establish, by rule, "a definition of the services that are supported by Federal universal service support mechanisms . . . ." 47 U.S.C. § 254(a)(2). There is some more particular guidance found in Section 254(c)(1), where Congress recognized that the concept of eligible services is an evolving concept that may include services "being deployed *in public telecommunications networks* by telecommunications carriers." 47 U.S.C. § 254(c)(1)(C) (emphasis added). Thus, Congress contemplated that certain network functionalities such as internal connections may be properly considered to be an eligible service.

Of course, Congress expressly provided that schools and libraries be provided with an additional, "special" package of eligible services aside from the core services established under Section 254(c)(1). 47 U.S.C. § 254(c)(3). That fact alone supports an expansive view of the FCC's authority to establish a broad array of eligible services for schools and libraries including internal connections. Just because a service like inside wire is competitive and has been detariffed does not mean that it is not subject to being encompassed by Section 254. It is clear that Congress envisioned that eligible services under Section 254 may be subject to varying levels of competition, now or in the future.

Congress clearly wanted to encourage and incent competition for the provision of eligible services. Section 254 repeatedly provides that the federal universal service mechanism should be designed to foster "access to and use of" eligible services. 47 U.S.C. § 254(h)(1)(B). Section 254 also specifically provides that the FCC shall establish "competitively neutral" rules to enhance access to advanced services by schools and libraries. 47 U.S.C.

§ 254(h(2)(A). Certainly, the entire 1996 Act is designed to foster competition in all areas of telecommunications. Relative to Section 254, in particular, a significant purpose of establishing an enhanced universal service program is to increase incentive for carriers to compete over a broader range of geographic and economic boundaries.

Perhaps most obvious in this regard is that fact that Section 254 expressly provides, in the context of providing access to advance services for schools and libraries, that the FCC is authorized "to define the circumstances under which a telecommunications carrier may be required to connect its network to such public institutional telecommunications users." 47 U.S.C. § 254(h)(2)(B). Clearly, in the context of universal service, that authority includes defining internal connections as an eligible service and establishing a discount or funding mechanism applicable to inside wire for schools and libraries. Finally, the Joint Explanatory Statement made several references to providing access to "classrooms" and not just school buildings. S. Conf. Rep. No. 104-230, 104th Congr., 2d Sess. 132-133 (1996).

For the above reasons and those already referenced and discussed in the Recommended Decision, the FCC should adopt the Joint Board's list of eligible services for schools and libraries including internal connections.

Management of School/Library Funds

Metropolitan Fiber Systems (MFS) maintains that if inside wiring is included in subsidies provided by universal service funding, then competitors should have unlimited access to that wiring. For example, if a company provides the wiring to an institution, an other telecommunications provider should have access to provide any and all services over that wiring. MFS Comments at 32 and 33. The PUCO supports MFS' recommendation on

this matter. As a result, the PUCO urges the FCC to reinforce, in this proceeding, the decision adopted in its November 21, 1986, Memorandum Opinion and Order in CC Docket No. 79-105, which precluded any LEC from restricting a customer's or property owner's use of inside wire including, but not limited to, the removal or rearrangement of the wiring.

GTE maintains that the requesting entity (*i.e.*, the schools) should be required to select the winning bid, not the fund administrator. GTE Comments at 101. The PUCO agrees with GTE's suggested clarification of the Joint Board's recommendations that each educational institution or consortia requesting a package of services should have the rights and responsibilities to select the winning bid for the provision of those requested services. A central administrator would not have the same expertise as the schools themselves of knowing the details and nuances of their own institutions and of being able to evaluate the trade-offs in perspective bids for packages of services.

The FCC should not preempt state and regional education authorities.

NY Education comments that states should be given the responsibility for managing the allocation of funds derived from the intrastate contributions. NY State Dept. of Ed. Comments at 1. The PUCO appreciates and supports the New York State Education Department Comments that states should be given the responsibility for managing the allocation of funds derived from intrastate contributions. The PUCO agrees that any FCC funding mechanism should not "preempt or disrupt state and regional authority in establishing and coordinating their own priorities and policies" NY State Dept. of Ed. Comments at Page 1. In addition, the PUCO shares the concerns of the N.Y. State Education Department that state education agencies

should be responsible for collecting data, defining services and developing a statewide implementation plan that would integrate the goals of this program into their own programs for using technology to support and improve learning and teaching.

In PUCO's original comments in this proceeding described Ohio's substantial commitment to educational technology. PUCO Comments at 14-16. The State of Ohio has recently formed the Office of Information, Learning and Technology Services to coordinate statewide efforts at the development and integration of educational technology into the curricula of Ohio schools. It is incumbent upon the FCC to ensure that Ohio retains its ability to continue to implement educational technology programs and that FCC educational support mechanisms enhance and complement state-sponsored initiatives.

ADMINISTRATION

The FCC's jurisdictional authority must be limited.

In its comments, Ameritech indicates that there should be no restrictions placed on how a carrier passes its costs through in their rates. These cost increases could be recouped through exogenous adjustments to price cap plans, and if intrastate support is involved, the FCC should require that state rate freeze plans be modified to permit flow through of costs. Ameritech Comments at 30.

The PUCO disagrees with Ameritech's recommendation to the FCC on these matters. In the event the states and the FCC can agree to fund the interstate universal service programs with assessments made on both interstate and intrastate revenues (arguendo), the PUCO believes that the individual states must determine the method for cost recovery of those

contributions that would be based on intrastate revenues. As indicated in its initial comments in this proceeding, the PUCO questions and challenges the FCC's authority to make assessments on intrastate revenues to meet its interstate universal service obligations imposed by the 1996 Act. PUCO Comments at 20-26.

Additionally, contrary to Ameritech's allegation, the PUCO submits that the FCC does not possess the requisite authority to require the individual states to make exogenous adjustments to their respective intrastate price cap plans to take into consideration contributions on behalf of local carriers to the interstate fund, which were based on intrastate revenues. Expressed another way, the PUCO submits that the individual states have sole authority over local service rates within their respective jurisdictions. Accordingly, the PUCO further maintains that the FCC does not possess the requisite authority to require the states to lift any local rate freezes that where negotiated at the state level. Finally, on a related matter, the FCC must confine to the federal jurisdiction any rate increases, or exogenous adjustments to price cap plans, resulting from local carriers' contributions to the federal universal service fund, which were based on interstate revenues.

Clarifications Regarding Ohio Proceeding Mentioned in CBT Comments

Cincinnati Bell Telephone (CBT) criticizes the Joint Board's refusal to recommend imposing affirmative symmetrical obligations on all carriers receiving universal service assistance. CBT Comments at 7-8; Recommended Decision at ¶ 156. In attempting to provide an example of potential "cream skimming" in Ohio, CBT cited the recently-decided Communications Buying Group (CBG) certification proceeding conducted before the PUCO, wherein CBG was certified to provide local service after testifying that it planned to

target primarily business customers. CBT Comments at 7. The PUCO generally agrees with the CBT's concerns in this regard, but the circumstances and details of the PUCO's decision in Case No. 96-431-TP-ACE should be clarified.

First, even though CBG applied and argued in favor of being authorized to serve all of Ohio's 88 counties, the PUCO granted a limited certificate to CBG authorizing service in only 11 Ohio counties. Application of Communications Buying Group, Entry on Rehearing at 5 (December 19, 1996), Case No. 96-431-TP-ACE. Moreover, the PUCO indicated at the time that it granted the certificate of authority that CBG would be held accountable for its chosen market strategy should there be a disproportionate effort to select certain customers:

> With regard to CBT's argument that CBG should not be authorized to provide local service because CBG only plans on providing service to business customers, * * * [we have previously decided that] there will be no requirement on new entrants in the local service market to provide service to all customers in an exchange, but that NECs [new entrant carriers] who do not serve an appropriate proportion of residential and business customers will be required to contribute more to the universal service fund than the incumbent local carrier (ILEC) on a proportional basis.

Application of Communications Buying Group, Entry on Rehearing at 4 (December 19, 1996), Case No. 96-431-TP-ACE. Although the PUCO shares some of the concerns articulated by CBT regarding "cream skimming," CBT's comments regarding CBG's Ohio certification proceeding were incomplete and may have suggested (improperly) that the PUCO blindly certified a non-proportional niche carrier without reservation or consequence.

III. CONCLUSION

The PUCO urges the FCC to incorporate the above comments into its final decision in this proceeding. The PUCO wishes to thank the FCC for the opportunity to file reply comments responding to the Joint Board's Recommended Decision on universal service.

Respectfully submitted,

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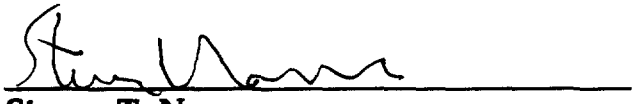
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing reply comments **In the Matter of Federal State Joint Board on Universal Service** was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following parties of record, this 9th day of January, 1997.



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